



No. 7493



IN THE  
United States  
Circuit Court of Appeals

FOR THE NINTH CIRCUIT. 16

REX B. GOODCELL, Former Collector  
of Internal Revenue for the Sixth Col-  
lection District of California,

*Appellant,*

*vs.*

THE ST. HELENS PETROLEUM  
COMPANY, LTD., a corporation,

*Appellee.*

On Appeal From the District Court of the United  
States, for the Southern District of California,

**BRIEF FOR THE APPELLANT**

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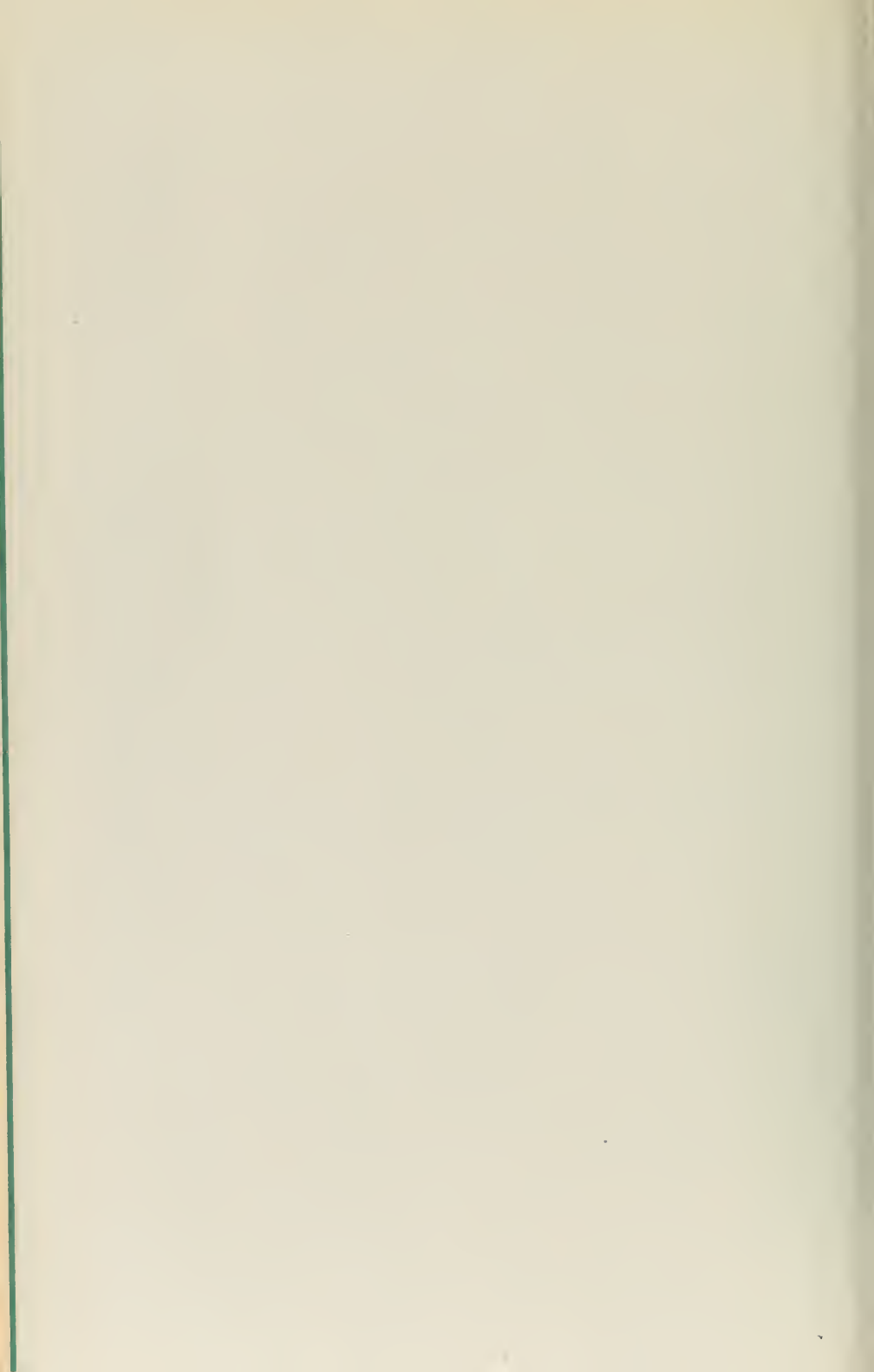
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PAUL P. O'BRIEN,  
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*Appellant,*

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COMPANY, LTD., a corporation,

*Appellee.*

**BRIEF FOR THE APPELLANT**

**Opinion Below**

The only previous opinion in the present case is that of the District Court of the United States for the Southern District of California (R. 40-41), which is not reported.

**Jurisdiction**

This appeal involves income and profits taxes of The St. Helens Petroleum Company, Ltd., a corporation, for the fiscal year ended May 31, 1922 (R. 31-32), and is taken from a judgment of the District Court in favor of the taxpayer entered November 17, 1933 (R. 26-27). The appeal is brought to this Court by petition for appeal on behalf of the Collector of Internal Revenue filed February 16, 1934, pursuant to Section 128 (a) of the

*Judicial Code*, as amended by the Act of February 13, 1925.

### Questions Presented

1. Whether a British corporation, doing business in the United States, is entitled to deduct from gross income, income taxes paid to Great Britain when such income taxes were deducted from dividends paid to its stockholders.
2. Whether the court erred in denying appellant's motion for judgment where it appeared that the taxpayer had been allowed special assessment.
3. Whether the judgment is supported by the findings.

### Statutes and Regulations Involved

The applicable provisions of the statutes and regulations involved will be found in Appendices A and B in appellant's brief in the case of *Galen H. Welch, Collector, v. The St. Helens Petroleum Company, Ltd., a corporation*, No. 7488, now pending before this Court.

### Statement

The facts were stipulated. (R. 31-39, 42-64.) The appellee is a corporation organized under the laws of Great Britain, having an office and place of business at Los Angeles, California (R. 31), whose income from sources within the United States during the fiscal year ended May 31, 1922, was 92.76 per centum of its total net income from all sources during that year (R. 34).

During the fiscal year ended May 31, 1922, appellee accrued and paid to the government of Great Britain an

income tax amounting to £17,827-4-0 Sterling, which at the rate of \$4.14 was the equivalent of \$73,804.61 in United States currency, of which appellee deducted from dividends paid by it to its stockholders during said fiscal year an amount of at least \$68,461.16, on account of said British income taxes. (R. 34.)

In its income tax returns for the fiscal year ended May 31, 1922, appellee reported a tax due therein of \$39,046.17, which was duly assessed and paid to appellant, then Collector of Internal Revenue for the Sixth Collection District of California. (R. 32.) Upon an audit of the returns, the Commissioner of Internal Revenue determined a deficiency in appellee's tax for the fiscal year ended May 31, 1922, of \$2,166.21 (R. 32-33, 61-62), under Section 328 of the Revenue Acts of 1918 and 1921 (R. 62), which deficiency, together with interest, amounting to \$819.14, was duly assessed (R. 32-33), and appellee notified of such determination by Bureau letter dated November 7, 1928 (R. 45-64). Appellee paid such deficiency and interest to Galen H. Welch, as Collector of Internal Revenue, the successor in office to appellant (R. 6), amounting to a total of \$2,985.35, on March 11, 1929 (R. 32-33).

On or about November 20, 1923, appellee filed with the Commissioner of Internal Revenue a claim for credit claiming an overpayment of \$10,631.87 on said returns for the fiscal year ending May 31, 1922 (R. 6, 33), which was rejected by the Commissioner on November 7, 1928 (R. 61-63). On or about July 17, 1926, appellee filed with the Commissioner a claim for refund of \$7,500 of the tax paid for the fiscal year ended May 31,

1922, claiming that the same was filed in order to protect appellee's rights to any refund that may appear to be due when final audit of said returns have been completed by the Commissioner. (R. 7, 33.) On or about May 3, 1930, appellee filed with the Commissioner of Internal Revenue a claim for refund of \$25,000 of the tax paid for the fiscal year ended May 31, 1922, claiming that the Commissioner's allowance for depreciation on wells was erroneous in the amount of \$12,022.93 (R. 7), which was conceded by appellant (R. 34), and allowed by the court (R. 23); and further claiming that the Commissioner had failed to allow as a deduction any part of the British income tax accrued against appellee during the taxable year (R. 7-8). Appellee contended, and appellant denied, that appellee was entitled to such deduction, but it was agreed that if said British income taxes were deductible, the amount of such deduction for the fiscal year ended May 31, 1922, was \$68,461.16. (R. 34.) This amount was allowed as a deduction by the court. (R. 25, 74.) No other deductions were claimed by appellee in its claim for refund (Ex. 1), or in the complaint (R. 4-10).

The Commissioner of Internal Revenue failed to take any action with respect to the claim for refund (R. 33-34), and this suit was commenced on November 6, 1930, for the recovery of \$11,451.60 (R. 4-11).

By stipulation a jury was waived, and the case was tried by the court without the intervention of a jury. (R. 30.) At the close of all the evidence, counsel for appellant moved for judgment in favor of the appellant (R. 39), and on September 21, 1933, the court, by minute



entry, ordered judgment in favor of the appellee (R. 40-41). Pursuant to order of the court on motion to reopen the case for additional evidence (R. 20, 42), a stipulation of additional facts was filed November 6, 1933 (R. 42-64). Thereafter on November 14, 1933, the appellant filed a motion in arrest of judgment (R. 64-65), which was denied by the court (R. 66-67). The appellee filed requests for special findings of fact and conclusions of law (R. 67-69), which were denied by the court (R. 75). The findings adopted by the court (R. 21-25) were those requested by the appellee (R. 70-75).

The court held that the appellee was entitled to a deduction of \$12,022.93 on account of depletion on wells, and to a deduction of \$68,461.16 on account of income taxes paid to the government of Great Britain and deducted from dividends to its stockholders (R. 25), and on this basis rendered judgment for the appellee for \$11,451.60 (R. 26-27). From the judgment for appellee, the appellant has appealed. (R. 81.)

### **Specification of Errors to be Urged**

The court erred (R. 82-89):

1. In rendering judgment against the appellant and in favor of the appellee in the sum of \$11,451.60, together with interest thereon and costs taxed in the sum of \$20, in that the evidence introduced herein, the facts stipulated, and those facts established and found therefrom by the court and the record in this cause are insufficient to support a judgment in favor of the appellee in said amount, or in any other sum, or at all.

2. In rendering judgment for the appellee and against the appellant herein, for the reason that the evidence introduced and facts stipulated disclose that appellee is a corporation organized under the laws of Great Britain which, during the fiscal year ended May 31, 1922, accrued and paid to the government of Great Britain an income tax equivalent to \$73,804.61 in United States currency and that the appellee deducted from the dividends paid by it to its stockholders during said fiscal year an amount of at least \$68,461.16 on account of said British income taxes.

3. In rendering judgment for the appellee and against the appellant herein for the reason that the facts found by the court are insufficient to support a judgment for the appellee, the court having found from the evidence introduced and facts stipulated herein (R. 83-84):

I.

“That the plaintiff, The St. Helens Petroleum Company, Ltd. is and was at all times hereinafter mentioned, a corporation organized under the laws of Great Britain, and having its principal office and place of business at Los Angeles, California.

VIII.

“That during the fiscal year ended May 31, 1922, plaintiff accrued and paid to the Government of Great Britain, an income tax in the amount of £17,827-4-0 Sterling, which, at the rate of \$4.14 was the equivalent of \$73,804.61 in United States currency. That the income of plaintiff from sources within the United States during the fiscal year ended May 31, 1922, was 92.76 per centum of the total net income of plaintiff from all sources during said year. The amount of British income tax allocable to

United States income was \$68,461.16. Plaintiff deducted from dividends paid by it to its stockholders during said fiscal year an amount of at least \$68,461.16.

IX.

“That the Commissioner of Internal Revenue has allowed no deduction on account of said British income taxes for the fiscal year ended May 31, 1922, and that no refund has been made to plaintiff of any taxes paid by it on its Federal income tax returns for said fiscal year.

X.

“The taxable net income of the plaintiff for the fiscal year ended May 31, 1921, as determined by the Commissioner of Internal Revenue, was \$2,350,425.78. The profits tax of plaintiff for said fiscal year was determined under the provisions of Section 328, Revenue Acts of 1918 and 1921, as follows:

Profits tax, Section 328 (1920 rates)	\$568,803.04
Profits tax, Section 328 (1921 rates)	464,444.13
7/12 of \$568,803.04	331,801.77
5/12 of \$464,444.13	193,518.39

Total profits tax for fiscal year ended	
May 31, 1921, Section 328—	\$525,320.16

“The income tax of plaintiff for said fiscal year was determined as follows:

Net income—	\$2,350,425.78
Less: Interest on United States obligations not exempt—	\$143,352.56
Profits tax—	525,320.16
	668,672.72

Amount taxable at 10%	\$1,681,753.06
Income tax at 10%—	\$ 168,175.31”

4. In finding and concluding as a matter of law herein that any part of the amount of \$68,461.16 accrued and paid by the appellee to the government of Great Britain as an income tax during the fiscal year ended May 31, 1922, and deducted by appellee from dividends paid by it to its stockholders during said fiscal year was deductible from appellee's gross income for said year in computing the correct income tax due from it to the Government of the United States.

5. In refusing to adopt the appellant's Proposed Finding of Fact Number I, which reads as follows (R. 85):

“That there was no substantial or sufficient evidence produced on behalf of the plaintiff upon which to support a judgment in its favor in the above-entitled action,”

for the reason that the record and the evidence in this case support and require said Proposed Finding of Fact.

6. In refusing to adopt the appellant's Proposed Finding of Fact Number II, which reads as follows (R. 85):

“The tax involved in this action was assessed under the provisions of Section 327 and 328 of the Revenue Act of 1921,”

for the reason that the record and the evidence in this case disclose that the tax involved in this action was assessed under the provisions of Sections 327 and 328 of the Revenue Acts of 1918 and 1921.

7. In refusing to adopt the appellant's Proposed Conclusions of Law numbered I, II and III, respectively, which read as follows (R. 86):

“That there was no substantial or sufficient evidence produced on behalf of the plaintiff upon which to support a Judgment in its favor in the above-entitled action.

“That this Court has no jurisdiction of the subject matter of this action, the tax involved having been assessed under the provisions of Sections 327 and 328 of the Revenue Act of 1921.

“That upon the law, the plaintiff is not entitled to recover any sum whatsoever from the defendant in the above-entitled cause,”

for the reason that the evidence introduced and the facts found by the Court in this action support and require the adoption of said Conclusions of Law and disclose that the Court is without power or jurisdiction to enter a judgment for the appellees herein.

8. In concluding as a matter of law that the Commissioner of Internal Revenue erred in failing and refusing to allow to appellee a deduction on its income tax return for the fiscal year ended May 31, 1922, in the amount of \$68,461.16 for income taxes accrued and paid to the government of Great Britain, for the reason that the evidence introduced and the facts found therefrom by the court disclose that the amount of \$68,461.16 so paid by appellee was by it deducted from dividends paid by it to its stockholders during said fiscal year.

9. In denying appellant's Motion for Arrest of Judgment herein for the reason that the evidence introduced herein and the facts found therefrom by the court disclose that appellee's income and profits taxes for the fiscal year ended May 31, 1922, were assessed under the “Spe-

cial Assessment” provisions of Sections 327 and 328 of the Revenue Acts of 1918 and 1921, and the court is without power or jurisdiction to recompute the tax determined by the Commissioner of Internal Revenue.

10. In holding that it had jurisdiction or power to review the determination of the Commissioner of Internal Revenue of the appellee’s net income and the amount of income and profits tax due thereon for the taxable year ending May 31, 1922, for the reason that said net income and the tax due thereon were determined by the Commissioner of Internal Revenue under the “Special Assessment” provisions of Sections 327 and 328 of the Revenue Acts of 1918 and 1921.

11. In denying the appellant’s Motion for Arrest of Judgment herein for the reason that there was no substantial or sufficient evidence introduced in the case upon which to base a judgment for the appellee and the further reason that the court had no jurisdiction or power to review the discretion of the Commissioner of Internal Revenue in determining appellee’s net income and the tax due thereon for the taxable year ending May 31, 1922, the taxes having been determined and assessed under the “Special Assessment” provisions of Sections 327 and 328 of the Revenue Acts of 1918 and 1921.

12. In its Conclusions of Law for the reason that said Conclusions are not supported by the facts found by the court herein.

13. In concluding as a matter of law that the appellant had illegally collected from the appellee the sum of \$2,985.35 and that the appellee is entitled to judgment against the appellant for the following reasons:

(1) That the court was and is without power or jurisdiction to review the discretion of the Commissioner of Internal Revenue in determining the appellee's net income and the tax due thereon for the taxable year ending May 31, 1922, the tax having been determined and assessed under the "Special Assessment" provisions of Section 327 and 328 of the Revenue Acts of 1918 and 1921;

(2) That the tax, of which a refund is sought in this action, was determined, assessed, collected and paid as an excess profits tax within the meaning of Sections 327 and 328 of the Revenue Acts of 1918 and 1921.

14. In adopting its Finding of Fact numbered X for the reason that the same is not supported by the evidence in that the evidence and pleadings disclose that appellee's income tax for the taxable year ending May 31, 1922, was not increased by the Commissioner of Internal Revenue but that the deficiency determined arose from additional excess profits tax determined by the Commissioner.

### Argument

This appeal involves the identical questions that are presented in the case of *Galen H. Welch, Collector of Internal Revenue for the Sixth Collection District of California, v. The St. Helens Petroleum Company, Ltd., a corporation*, No. 7488, now pending before this Court. The appellant's position is fully presented in the brief for the appellant filed in that case. It will, therefore, not be repeated here but is included herein by reference. Accordingly copies of appellant's brief in that case are served herewith upon counsel for the appellee.

### Conclusion

For the reasons stated in the appellant's brief in another *The St. Helens Petroleum Company, Ltd.*, case No. 7488, it is urged that the decision of the court below in holding that amounts accrued and paid by the appellee to the government of Great Britain as an income tax and deducted by appellee from dividends paid by it to its stockholders during the fiscal year was deductible from appellee's gross income for that year, and in denying appellant's motion in arrest of judgment, was erroneous and should be reversed.

Respectfully submitted,

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January, 1935.